



**BOV POLICY # 13 (2015) UNIVERSITY-RELATED FOUNDATIONS**

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**Responsible Executive:** Vice President for Finance and Administration  
**Applies to:** University Community

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**STATEMENT OF POLICY**

All University foundations that are established or operated for the University's benefit or that use the University's name or resources shall be operated in accordance with this policy in order to ensure efficiency and accountability among, and maintain independence and integrity, within.<sup>i</sup>

Pursuant to the Baliles Guidelines on Foundations (1983), Foundation disclosure to the University is fundamental to public accountability. Thus, institutions should have in force meaningful mechanisms for disclosure and review of critical Foundation operations. The Board of Visitors must be advised of the purpose of the Foundation and the scope of its activities, including grants and fundraising, even though the Board's policy is not to control the activities and functions of the related Foundation.

This statement articulates the principles regarding university-related Foundations adhered to by the Norfolk State University Board of Visitors and will guide the establishment and operation of such foundations at the University.<sup>ii</sup>



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### **PURPOSE**

Affiliated Foundations exist because of, and for, the public institutions they support and whose names they share. Looking beyond their separate corporate identities, the Foundations can be depositories of substantial funds charitably donated for the benefit of public higher education institutions and their related activities. Their assets exist essentially because of public tax policy and publicly spirited donations. As a consequence, fiduciary obligations are impressed by law on the management of such funds. These fiduciary obligations fall primarily on the officers and directors of the Foundation.

It is declared to be the public policy of the Commonwealth of Virginia that state-supported institutions of higher education be encouraged to increase endowment funds and unrestricted gifts from private sources ([23.1-101](#)). The Board of Visitors is committed to providing quality support for fundraising efforts approved by University-related Foundations, and to that end seeks to promote efficiency and coordination among, as well as maintain independence and integrity within, all University-related entities.

### **DEFINITIONS**

**Foundation:** for the purposes of this Policy, Foundation means a non-stock corporation and/or tax-exempt entity affiliated with the University and organized exclusively for the benefit of the University or one or more of the University's units. A Foundation includes University-related associations, subsidiaries and affiliates of a University-related Foundation, and the Foundation itself. Foundations' use the University's name, consumes its resources, occupies its space, and/or enters into transactions with the University for which the concurrence of the University may be required.

**Unit:** includes any school, department, division and other component of the University.

**University:** Norfolk State University, an institution of higher education and an agency of the Commonwealth of Virginia.

### **CONTACT**

The Vice President for Finance and Administration officially interprets this policy. The Vice President for Finance and Administration is responsible for obtaining approval for any revisions as required by [BOV Policy # 01 \(2014\) \*Creating and Maintaining Policies\*](#) through the appropriate governance structures.



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### **UNIVERSITY-RELATED FOUNDATIONS**

The University has a vital interest in, and recognizes the value of, University-related Foundations established and operated to solicit funds in the University's name, to manage and invest gifts and property for the University's benefit, and/or to promote or sponsor programs in support of the University or its activities.

To protect the University's interests, and as a condition of a Foundation's use of the University's name or resources, the Board of Visitors hereby requires that University-related Foundations shall be:

1. Established and organized exclusively for the University's benefit;
2. Operated in accordance with generally accepted business and accounting principles; donative documents, and
3. Managed in a manner consistent with the Foundations' enabling document(s) and the University's purpose, mission, and procedures, as specifically set forth in this Policy.

#### **I. Establishment and Organization of Foundations**

A Foundation has as its purpose one or more of the following, to:

1. Facilitate fundraising programs and contributions from private sources for the benefit of the University or one or more of its units;
2. Manage and invest private gifts and/or property for the benefit of the University or one or more of its units; and
3. To promote, sponsor, and complement educational, scientific, literary, research, charitable, health care-related, or cultural activities for the benefit of the University or one or more of its units.

University Foundations may be created only with the approval of the University's Board of Visitors and after a review of the purpose of the Foundation, its proposed organizational format, and the scope of its activities and financial sustainability.

#### **II. New Ventures or Changes in Established Foundations**

Any proposed, new business venture or change in nature, purpose, or scope of Foundation activities that is substantial in nature, and outside the normal, stated function of the Foundation shall be submitted to the Board of Visitors for approval. New business ventures are considered to be any significant change from current business activities (e.g., an entity which has been engaged primarily in fundraising purposes to change to purchasing and leasing commercial office space).

#### **III. Organizational Requirements**

A Foundation shall be organized and operated as a Virginia non-profit, non-stock corporation or entity that is legally separate from the University.<sup>iii</sup> The Foundation shall obtain and maintain



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status as a tax-exempt, charitable organization under State and Federal income tax laws so contributions and bequests to it will be deductible charitable contributions as provided by Federal income tax law.

Each Foundation's enabling documents shall include a clause requiring that in the event of its dissolution or final liquidation:

1. None of the property or any proceeds thereof shall be distributed to or divided among any of the officers or directors or inure to the benefit of any individual; and
2. After liabilities and obligations have been paid, satisfied and discharged and adequate provisions made thereof, all remaining property of the Foundation and the proceeds thereof shall be distributed by its Board of Directors to the University or its designee provided it is an organization or organizations that is (are) qualified under Section 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended.

Each Foundation shall enter into a Memorandum of Understanding (MOU) with the University that shall memorialize the terms and conditions of the relationship between the two organizations. The MOU will be periodically reviewed and updated as appropriate. The MOU will require written approval by the University's Board of Visitors.

### **IV. Representation on Foundations**

#### Board of Visitors and President

Two University representatives, one designated by the Board of Visitors and one designated by the University President, shall serve as voting members of the Foundation's governing board. One or both of the representatives shall serve on any executive or similar committee empowered to act for the governing board of each Foundation. This responsibility may not be delegated. Efforts will be made to preserve the make-up of the Foundation's governing board with respect to the University appointments.

Representatives shall submit to the full Board an annual summary of activities by no later than December 1 of each year covering the previous July 1 - June 30 fiscal year. The report shall include descriptions of all activities of the prior year and identify matters that are appropriate to be brought to the attention of the Board. The representatives will also include a section on the Foundation's compliance with the provisions of this Policy and receive and review all documents received from the Foundation on behalf of the Board.

Each Foundation will establish an audit committee to report to its board of directors. The audit committee shall include one or both of the University's designated representatives.

### **V. University Resources and Services**

- A. The University, upon written request or proposal from the Foundation, may make available administrative services to aid the Foundation in its management and operation. Administrative services may include:



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1. Access to the University's financial systems to receive, disburse, and account for funds held. With respect to transactions processed through the University's financial system, the Foundation must comply with all University policies, including any Administrative policies and departmental procedures.
  2. Accounting services, which may include: monthly cash disbursements and receipts, accounts receivable and payable, bank reconciliation, monthly reporting and analysis, auditing, payroll, and budgeting.
  3. Investment, management, insurance, benefits administration, and similar services.
  4. Central University services such as dining, catering, printing, parking and transportation, and facilities management.
  5. Training programs including instructional information on procurement and purchasing practices.
  6. Advancement or development services encompassing research, information systems, communications and special events.
- B. Administrative services may be made available if providing such service is not cost-prohibitive to the University. Costs incurred by the University shall be reimbursed by the Foundation. None of the University's personnel may perform services for the Foundation without the University's prior written consent.
- C. Alternatively, a Foundation with sufficient capability may choose to provide and support its administrative and financial activities with its own staff or external service providers. Such support services shall be the sole responsibility of the Foundation.
- D. The Foundation may be eligible to use the University's facilities, subject to availability, reimbursement, and adherence to all University policies and procedures and Commonwealth of Virginia laws. If University space is requested and assigned, the description of such space and any special conditions applicable to its use shall be communicated to the President and University Space Committee by the appropriate Dean or designee in writing at least sixty (60) days prior to any such assignment.

### **VI. Foundation Relationship with the University**

- A. The University and the related Foundation acknowledge that each is an independent entity and agree neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, staff or activity participants. Similarly, the Commonwealth of Virginia will not be liable for any acts or omissions of the Foundation, nor its employees.
- B. Transactions between the University and a related Foundation shall meet the normal tests for ordinary business transactions, including proper documentation and approvals. Special attention shall be given to avoiding direct or indirect conflicts of interest between the University and the related Foundation and those with whom the Foundation does business.



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- C. The Foundation shall not offer a post-secondary course, seminar, workshop or similar instruction, whether or not for credit, using the name of the University or any of its school or departments, unless prior written approval by the University President (or designee) is received. Any publicity concerning such a course or similar program shall make clear that it is not being offered by the University or any of its academic departments.
- D. All correspondence, solicitations, activities and advertisements concerning the Foundation shall be clearly discernible as being from the Foundation, and not from the University.
- E. The University is entitled to recover its costs incurred for personnel, use of facilities, or other services provided to the Foundation; and likewise, the Foundation is entitled to recover its costs incurred for personnel, use of facilities, or other services provided to the University.

### **VII. General Management and Operation of Foundations**

- A. The Foundation shall establish the financial and procedural framework for the general management and operation of University-related Foundations including:
  - 1. Scholarship and student financial support coordination and distribution;
  - 2. Management of demand accounts;
  - 3. Spending procedures and accounts;
  - 4. Reporting relationship between the University and the Foundation; and
  - 5. Any other general management or operational matter related to the Foundation.
- B. The agreed-upon framework shall require Board of Visitors review and approval, and comply with the requirements of this Policy. The framework shall be incorporated into the Memorandum of Understanding between the Foundation and the University as an addendum.
- C. University-related Foundations shall adopt guidelines governing fundraising activities that conform to the following:
  - 1. Plan and conduct all fundraising activities in conjunction with the Division of University Advancement to ensure proper coordination;
  - 2. Ensure that funds or gifts payable to the Board of Visitors or to "Norfolk State University" are approved by the Board of Visitors and deposited with or transferred to the University<sup>iv</sup>; and
  - 3. Advise donors that any restrictive terms and conditions attached to gifts or donations for the benefit of the Board of Visitors or University are subject to Board approval.
- D. The Foundation shall adopt all applicable laws, rules or policies of the Commonwealth and University pertaining to non-discrimination and equal opportunity, appointment and retention of Foundation executive, and compensation in general.



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- E. Each Foundation shall observe the following guidelines governing its purchasing and procurement of goods and services:
1. Even though not required to comply with the Virginia Public Procurement Act, [Code of Virginia § 2.2-4300](#) et seq. (2014 as amended), it is deemed advisable and appropriate to employ competitive practices in procuring goods and services. An effort also should be made to utilize minority vendors whenever possible.
  2. Goods and services shall not be purchased on behalf of any University unit with the expectation of reimbursement from that unit, because such a transaction would conflict with the Virginia Public Procurement Act.
  3. Goods and services may be purchased by a Foundation as a gift for the University subject to the normal review and written approval for gift acceptance. See Section VII (C).

### VIII. Investment and Disbursement Guidelines

Each related Foundation shall adopt and observe the guidelines governing the investment and disbursement of funds and assets:

- A. Any transfer of endowments or other assets by the University to the Foundation, or by the Foundation to the University, for management or investment shall be formalized in a memorandum of agreement so the fiduciary requirements of the respective board are complied with and to assure, among other things, that any restrictions governing the future disposition of funds are observed.
- B. To borrow funds from the Foundation or association, the University shall obtain prior, written approval from the General Assembly, University Board of Visitors, University President and the Foundation's board of directors.
- C. The Foundation shall notify the President at the earliest possible date, of any proposed purchase of real estate and any material debt to be incurred for permanent or working capital, and coordinate its efforts with those of the University and other Foundations.

### IX. FINANCIAL TRANSACTIONS AND ACCOUNTING PRACTICES

University-related Foundations shall have in place an accounting system to ensure that financial activities are executed and reported in accordance with generally accepted business and accounting practices. If the Foundation has limited staff capability to satisfy this requirement, the University or a designated entity may provide accounting services in accordance with this Policy.

**Budget and Capital Plan.** A detailed annual operating budget and capital expenditure plan shall be adopted with the approval of the board of directors. Financial commitments and expenditures by the Foundation shall be in accordance with the approved budget and capital plan.

**Annual Audit.** An annual audit shall be conducted by an independent certified public accountant. The audit firm or client partner and managers shall be rotated at least every seven



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years. The Foundation's board of directors shall also require that the scope of the external audit be expanded to include compliance testing of the requirements of this Policy and other related policies, including but not limited to general accounting, fund raising and gift accounting, investment, and University and Foundation employee compensation policies and procedures.

**Bonding.** Officers and staff members of the Foundation shall be bonded as appropriate in amounts to be determined by its board of directors. General liability insurance and directors' and officers' liability indemnification<sup>v</sup> also shall be obtained in amounts determined by the board of directors to be reasonable and appropriate. See *Code of Virginia* § 13.1-870 (2007 as amended).

**Inspection of Records.** The Rector of the Board of Visitors (or designee) may inspect and audit the Foundation's books and records at reasonable times with the board of director's approval. Such inspection of records shall not be unreasonably withheld.

**Political Activities or Influence.** In accordance with Internal Revenue Service regulations governing tax exempt organizations, no substantial part of the activities of the Foundation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating or intervening in any political campaign on behalf of any candidate for public office.

**Employing University Employee.** No salaries, consulting fees, loans, or perquisites shall be paid to a University employee by the Foundation without the prior written approval of the Rector and University President. Compensation plans for University employees which set a defined rate or percentage payment may be submitted for approval annually in lieu of specific dollar amounts.

**Conflict of Interest.** All conflict of interest or potential conflict of interest shall be disclosed at the time of discovery or as soon as feasible to the Foundation's board of directors. Business transactions involving the Foundation and the personal or business affairs of a trustee, director, officer, or staff member shall be approved in advance by the board of directors of the Foundation. In addition, trustees, directors, officers, and staff members of the Foundation shall disqualify themselves from making, participating in making, or in any way attempting to use their official positions to influence a decision in which they have or would have a financial interest.

No director, trustee, officer, or staff member of a Foundation shall accept from any source any gift or gratuity that is offered, or reasonably appears to be offered, because of the position held with the Foundation by the individual, nor shall an offer of a gift or gratuity be extended by such an individual on a similar basis.<sup>vi</sup> This provision applies to the individual member of the Foundation and does not apply to gifts offered to or by a Foundation as an organized entity.



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### **X. REPORTING AND DISCLOSURES**

- A. On an annual basis, each University-related Foundation shall submit to the Rector of the Board of Visitors and the President the following:
- a) A copy of its completed Internal Revenue Service (IRS) Form 990 and any other “tax-exempt” materials filed with the IRS.
  - b) Notification of any audit or review by tax authorities or any action taken, or threatened action that would adversely affect the tax-exempt status of the Foundation.
  - c) The financial report and tax return of the Foundation, audited by an independent certified public accountant, the management letter, and management’s response thereto. Confirmation that a meeting has been held between the Foundation’s audit committee (or similarly designated committee) and its external auditor is a required element of the Annual Certification Letter (see page 10).
  - d) An annual budget and expenditure plan (including capital expenditures) approved by its board of directors at the beginning of the new fiscal year, or on a mutually agreeable date. The budget should be presented in a comparative format with the prior year and include major categories of revenues and expenses—planned or committed.
  - e) Identification of all investments and those under consideration by the Foundation. Include each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding fiscal year.
  - f) Notice of any litigation or threat/notice of litigation involving the Foundation during prior or upcoming fiscal year.
  - g) A mutually agreed upon schedule regarding its financial position and capital expenditures, with special emphasis on transactions between the Foundation, and the University or its units as well as transactions affecting its employees and/or directors. This report may be made in regularly scheduled review sessions between Foundation administrators and the President’s designee.
  - h) An annual report.
  - i) Current listing of names, profession of all Foundation directors and officers, and all individuals or private entities responsible for the daily management of the funds and salaries or fees paid, if any.
  - j) Description of any compensation paid to anyone affiliated or employed with the Foundation, and the amount (excluding expense reimbursements).
  - k) Description of all private gifts and contributions received for the institution’s benefit, and description of any restrictions or conditions which attach (identity of the donor is desirable, if such gift or contribution is not made anonymously).
- B. Any repeal, amendment, or additions to the Foundation’s articles of incorporation or bylaws will be presented for opinion or comment to the Rector and President prior to approval by the Foundation’s board. Any changes in purpose and potential distribution or use of assets must be disclosed.



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- C. The President will designate a University officer to:
- a) Accept and review documents received from University-related Foundations on behalf of the President; and
  - b) Review compliance with this Policy by the University-related Foundations;
  - c) Prepare an annual report on compliance by the University-related Foundations for the Board of Visitors to be submitted not later than December 1 of each year covering the previous July 1 - June 30 fiscal year.

### **XI. Annual Certification Letter**

On an annual basis, the Foundation executive shall submit to the Board of Visitors and to the President a letter which certifies compliance with the following requirements:

1. Copies of this Policy have been circulated among all members of the Foundation staff and its board.
2. Compensation of any kind which the Foundation has provided to any University employees has been approved by the Rector and President (or respective designees) prior to payment. A listing of total payments to specific individuals should be attached to the certification letter.
3. An audit by an independent certified public accountant has been completed, and the audit committee of the Foundation has met and reviewed the management letter and response with that auditor.
4. The annual budget of the Foundation has been approved by the board of directors and provided to the Rector and President).
5. Written approval has been obtained for any funds the University has borrowed from the Foundation.
6. Written approval has been obtained from the Board of Visitors and the Rector for any substantial proposed business ventures or changes in the nature, scope, or purpose of the Foundation.
7. Other specific requirements as mutually agreed upon by the Foundation's board of directors and the President (or designee).

### **EDUCATION AND COMPLIANCE**

Related foundations will be provided the policy with any updates annually. To ensure conformity of the requirement of this policy, the office of the Vice President of Finance and Administration will monitor for compliance with this policy annually.

### **PUBLICATION**

This policy shall be widely published or distributed to the University community. To ensure timely publication and distribution thereof, the Responsible Executive or Office will make every effort to:

1. Communicate the policy in writing, electronically or otherwise, to the University community within 14 days of Board approval;



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2. Submit the policy for inclusion in the online Policy Library within 14 days of Board approval;
3. Post the policy on the websites of the Board of Visitors, Division of University Advancement, and each University-related Foundation; and
4. Educate and train all stakeholders and appropriate audiences on the policy's content, as necessary.

Failure to satisfy procedural requirements does not invalidate this policy.

### **REVIEW SCHEDULE**

- Next Scheduled Review: March 2024
- Approved by, date: March 19, 2021
- Revision History: March 20, 2015; May 10, 2002, August 30, 2002, and May 9, 2008; Eff. May 10, 2002; Revised August 30, 2002; May 9, 2008; March 19, 2010; March 20, 2015; March 17, 2016; September 15, 2017; December 11, 2020
- Supersedes: NSU Policy No. 51-001 Policy on University-Related Foundations

### **RELATED DOCUMENTS**

- [Code of Virginia § 2.2-4300](#) et seq. (2001 as amended), Virginia Public Procurement Act
- [Code of Virginia § 13.1-870](#) (2007 as amended) General standards of conduct for directors

### **FORMS**

*There are no forms associated with this Policy.*



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<sup>i</sup> The prologue of the *Baliles Guidelines on Foundations* (May 20, 1983), a memorandum from the Attorney General of the Commonwealth of Virginia to the presidents of Virginia's Public Institutions of Higher Education, state in pertinent part:

*Foundations exist because of, and for, the public institutions they support and after which they are named. Looking beyond their independent corporate existence, the Foundations are depositories of enormous funds charitably donated for the benefit of public higher education. Their assets exist essentially because of public tax policy and publicly spirited donations (p. 1).*

*As a fundamental step, the institutions should be encouraged to shoulder the primary responsibility for closely reviewing (as opposed to regulating) these Foundations. The Foundations should not be allowed to act under their name, nor for their benefit, without at least some form of minimum scrutiny and institutional review of Foundation activity on a periodic basis, frequent enough to be effective (p. 5).*

*It is clear that when such a Foundation receives or solicits funds under the institution's name, a trust is implied by law requiring prudent use and management of such funds (p. 10).*

<sup>ii</sup> This policy was adapted from the University of Virginia's Policy on University-Related Foundations, Policy ID # BOV-008 (January 1, 1993).

<sup>iii</sup> Note: It is foreseeable that a Foundation may find it desirable to form for-profit subsidiaries in order to assist it in carrying out its mission.

<sup>iv</sup> The Foundation's solicitation literature shall make it clear when gifts are to be made payable to the foundation. Each Foundation shall develop a procedure to document when gifts intended for the Foundation are erroneously made payable to a University entity other than a foundation, and when such documentation is possible, an exchange check may be issued by the University to the Foundation.

<sup>v</sup> See *Code of Virginia* §13.1-870.1 which limits liability of directors and officers of Virginia non-profit, non-stock corporations.

<sup>vi</sup> A gift or gratuity means any payment to the extent that consideration of equal or greater value is not received. It does not include informational materials, such as books, reports, calendars, or other unsolicited promotional material. A gift does not include modest entertainment, such as a meal or refreshments in connection with meetings, conferences, or public ceremonies, or home hospitality